

CITY OF FRAMINGHAM

ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

2018 JUN 26 A 9 33

BOARD OF APPEALS CASE NO. 18-16

PETITION OF CHARLES AND SUSAN LONG REALTY COMPANY, LLC

DATE OF DECISION: JUNE 12, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of CHARLES AND SUSAN LONG REALTY COMPANY, LLC (hereinafter the Applicant), for property located at 196 FOUNTAIN STREET. This Decision is in response to a Petition for a Variance for Floor Area Ratio and a Finding for the alteration of a pre-existing nonconforming structure as required by the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Charles and Susan Long Realty Company, LLC  
218 Turnpike Road  
Southborough, MA 01772

3. Location

Property is located at 196 FOUNTAIN STREET and identified by Assessors' Parcel ID 133-35-4277-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on June 12, 2018 the Board voted to GRANT the requested VARIANCE and FINDING by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

|                          |     |
|--------------------------|-----|
| PHILIP R. OTTAVIANI, JR. | YES |
| SUSAN S. CRAIGHEAD       | YES |
| STEPHEN MELTZER          | YES |

5. Proceedings

The Application was received by the Board on May 18, 2018 pursuant to MGL, Ch. 40A, §10, MGL, Ch. 40A, §6, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on June 12, 2018 at 7:15 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternates Rick McKenna and Edward "Ted" Cosgrove were present throughout the proceedings. Due to potential imminent changes to the makeup of the Board, Mr. Ottaviani appointed Mr. McKenna and Mr. Cosgrove as alternates. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

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Attorney Paul Galvani was present with Bryan Jones of Allen & Major Associates, Dan Ray of Jewett Construction Company, and Scott Barry, General Manager of R.H. Long Motors. Mr. Galvani explained, the property is owned by Charles and Susan Long Realty Company and is leased to R.H. Long Motors Sales since 1986, and used for the wholesale parts distribution retail operation. The premises consists of an industrial building with a gross floor area of 24,184 square feet on an 84,117 square feet lot. The 7,500 sq. ft. proposal for an addition would increase the building size to 31,684 sq. ft. and increase the Floor Area Ratio (FAR) from 0.29 to 0.38.

Mr. Galvani stated, the Massachusetts Department of Transportation made various eminent domain takings for the construction and widening of the Winter Street Bridge over the railroad tracks. The largest takings for the project were from the land at 196 Fountain Street, including parcels containing 371 sq. ft. and 6,028 sq. ft. These takings eliminated paved areas and an area of open space on the westerly portion of the lot. He explained that in addition to FAR relief, the existing structure required a Finding for its front setback nonconformity. Zoning requires 50 feet and only 16.7 feet currently exists. He stated, the proposed addition would have front setback of 56 feet at its closest point to Fountain Street.

In regards to parking, Mr. Galvani explained that 26 spaces are required and 91 were proposed, including four handicapped accessible spaces. He stated that the existing curb cuts along Fountain Street would not be altered. Mr. Cosgrove questioned if school buses parked on the premises. Mr. Galvani responded, no but they did at one point. He added that the parking was recently temporarily used for heavy construction equipment. Board members voiced no concerns.

## **6. Exhibits**

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for a 7,500 square foot building addition, dated May 17, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on May 22, 2018.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Conservation Commission comments dated June 8, 2018.
- 6.5. Memorandum in support, prepared by Attorney Paul Galvani, dated June 7, 2018, amended June 12, 2018.
- 6.6. Letter of support submitted by Allen & Major Associates, Inc., dated May 17, 2018.
- 6.7. Plan set entitled "Long Parts Warehouse", showing Cover Sheet (T1), Abbreviations/Legends and General Notes and List of Drawings (T1), Existing First Floor Plan (AD101), Existing Second Floor Plan (AD102), Existing Elevations (AD301), First Floor Plan (A101), Exterior Elevations (A301), and two three-dimensional color renderings, prepared by McHenry Architecture, 4 Market Street, Portsmouth, New Hampshire, and dated May 2, 2018.

6.8. Site Plan entitled "Variance Plan", dated May 17, 2018 and prepared by Allen & Major Associates, Inc.

Exhibits 6.7 and 6.8 shall be hereinafter referred to as the "Plans."

## 7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the General Manufacturing (M) zoning district.
- 7.2. On May 17, 2018, the Building Official denied the Application for a permit for a 7,500 square foot addition to a pre-existing nonconforming structure, pursuant to Section IV.E.2 and Section I.D.8.b of the Zoning By-Law.
- 7.3. On May 22, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance and Finding from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on May 28 and June 4, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The Applicant is seeking a Variance for Floor Area Ratio (FAR) and a Finding under M.G.L. c. 40A, Section 6, for an addition to a nonconforming structure. The existing structure is nonconforming for front setback and landscaped open space. The addition will be compliant for front setback and the resulting landscaped open space will be increased from 5% to 14%. However, the addition will result in an increase in FAR from 0.26 to 0.38, above the allowable 0.32.
- 7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *Land was taken for the Winter Street bridge project, resulting in a loss of lot area, which impacts the FAR.*
- 7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner.
- 7.9. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The use is a low-intensity distribution business for auto parts, allowed in the Manufacturing zone. The proposed addition will expand their storage area but will not result in a substantial*

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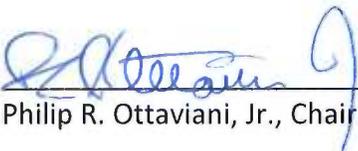
*increase in activity. In addition, the variance is a small one and the FAR will be substantially in keeping with the intent of the zoning district.*

- 7.10. G.L. c. 40A, §6 applies to pre-existing, nonconforming uses or structures and requires a Finding when the nonconforming structure is extended or altered in such a way that the extension does not at all affect the nonconformity. *The Board finds that the proposed expansion will not increase the nonconforming nature of the structure, and that it will not be substantially more detrimental to the area than the existing structure.*
- 7.11. The Board grants this Finding and Variance with the following condition:
- 7.11.1. The addition and improvements shall be located and constructed as shown on the Plans.
- 7.12. This Decision applies only to the requested Variance and Finding. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.13. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of the one-year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.
- 7.14. If the rights authorized by this Finding are not exercised within three years of the date of the filing of this Decision with the City Clerk, said Finding shall lapse. If construction or substantial use has not commenced within this three-year period, the Applicant may request an extension by submitting a written Application to the Board which contains an explanation of good cause for the failure to exercise the rights of this Finding. A written request for an extension must be submitted to the Board at least 30 days prior to the expiration of the three-year period.
- 7.15. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official
- 7.16. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the City of Framingham.

**8. Appeals**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the City Clerk.

ZONING BOARD OF APPEALS

By:   
Philip R. Ottaviani, Jr., Chairman

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